

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 3:09-CR-272
	:	
v.	:	(Chief Judge Conner)
	:	
MARK A. CIAVARELLA, JR.,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 2nd day of April, 2018, upon consideration of the motion (Doc. 367) for certificate of appealability filed by defendant Mark A. Ciavarella, Jr. (“Ciavarella”), requesting that the court issue certificates of appealability under 28 U.S.C. § 2253(c) on two issues, to wit: *first*, whether Ciavarella was denied effective assistance of counsel with respect to deprivation of a statute of limitations defense as to Counts 8, 9, and 10; and *second*, whether Ciavarella has established cause and prejudice to overcome procedural default as to his claim that the trial court’s jury instructions were inconsistent with the Supreme Court’s decision in McDonnell v. United States, 579 U.S. ___, 136 S. Ct. 2355 (2016), and further whether Ciavarella has established that the trial court’s jury instructions in fact were erroneous, and the court noting that the government indicated its non-concurrence in Ciavarella’s motion, (see Doc. 367-1), but did not file a brief in opposition thereto, and the court finding, given the nuance and complexity of the legal arguments raised *sub judice* and the interlaced nature of many of Ciavarella’s claims, that jurists of reasons may debate the court’s disposition of Ciavarella’s motion as to Counts 8, 9, and 10

and as to his McDonnell argument, see Slack v. McDaniel, 529 U.S. 473, 484 (2000), see also 28 U.S.C. § 2253(c)(2), and further upon consideration of Ciavarella's motion (Doc. 369) to stay proceedings pending appellate review, in which the government concurs should the court grant the requested certificates of appealability, (see Doc. 369-1), it is hereby ORDERED that:

1. Ciavarella's motion (Doc. 367) for certificates of appealability is GRANTED.
2. Certificates of appealability are GRANTED as to:
 - a. Ciavarella's claim that he was denied effective assistance of counsel and was prejudiced by said denial with respect to deprivation of a statute of limitations defense as to Counts 8, 9, and 10; and
 - b. Ciavarella's contention that he has established cause and prejudice to overcome procedural default on his claim that the trial court's jury instructions were inconsistent with McDonnell and further on his claim that the jury instructions in fact were erroneous and permitted the jury to convict Ciavarella of conduct which, following McDonnell, is no longer criminal.
3. Ciavarella's motion (Doc. 369) to stay proceedings pending appellate review is GRANTED. The above-captioned action is STAYED pending disposition by the Third Circuit Court of Appeals of the parties' cross-appeals.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania